
Finance Committee

HB 2320

Brief Description: Revising the tax code to ensure that products transferred electronically, and the gross income derived from such products, will continue to be subject to sales, use, and business and occupation taxes in a manner that complies with the streamlined sales and use tax agreement.

Sponsors: Representatives Hunter and Roberts.

Brief Summary of Bill

- Provides a separate imposition provision for the sales and use taxation of digital products to maintain conformity with the streamlined sales and use tax agreement.

Hearing Date: 3/27/09

Staff: Jeff Mitchell (786-7139)

Background:

Retail sales and use taxes are imposed by the state, most cities, and all counties. Retail sales taxes are imposed on retail sales of most articles of tangible personal property (TPP) and some services. If retail sales taxes were not collected when the property or services were acquired by the user, then use taxes are applied to the value of most TPP and some services when used in this state. Use tax rates are the same as retail sales tax rates. Prewritten computer software is included within the definition of TPP and is therefore subject to sales or use tax, but downloaded products such as digital music, movies, and books, are not specifically included within the definition of TPP. Currently, the Department of Revenue (DOR) treats downloaded music, videos, and books as TPP, subjecting these products to retail sales and use taxes. However, if these same products are streamed to the customer, then sales and use taxes do not apply because the customer is not considered to have taken possession of the product.

In 2007 the Washington Legislature directed the DOR to "conduct a study of the taxation of electronically delivered products" and to prepare a final report for the Legislature by September

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1, 2008. The legislation required the DOR to conduct the study in consultation with a committee consisting of four legislative members, as well as additional members representing the industry and government. The committee consisted of 16 members in total. In December 2008 the DOR completed its study. The final report included a discussion of a number of issues related to the taxation of digital products, including compliance with the streamlined sales and use tax agreement (SSUTA), sourcing, bundled digital products, and methods of obtaining digital products. The report's conclusion stated that legislation implementing tax policy on digital products is necessary in 2009 to: (1) protect the sales and use tax base; (2) establish certainty in the tax code; (3) maintain conformity with the SSUTA; and (4) encourage economic development. Because of the differing views on certain fundamental issues surrounding the taxation of digital products, the committee was not able to reach consensus on a specific tax policy proposal. However, the committee did agree that legislation adopting a broad, general imposition approach for digital products would be possible only if the legislation: (1) contains meaningful and easily administered broad-based exemptions for business inputs; (2) provides sales and use tax amnesty to taxpayers who failed to collect tax on digital products for prior periods; (3) maintains conformity with the SSUTA; and (4) protects and promotes the location of server farms and data centers in Washington.

On September 20, 2007, the SSUTA was amended to define three specified digital goods (digital audio-visual, digital audio, and digital books) as not being TPP. To remain compliant with the SSUTA, Washington has to enact a separate provision by January 1, 2010 to continue imposing sales and use tax on these three products. As of January 1, 2012, a separate tax imposition provision will be required to impose sales and use tax on all other electronically delivered products.

Summary of Bill:

The Department of Revenue's current tax treatment of downloaded digital products is codified. Therefore, movies, music, books, and other standard information that are downloaded to the end user would continue to be subject to sales and use tax. "Standard information" is defined as data, facts, or information not generated or compiled for a specific client or customer. Movies, music, books and other standard information that is streamed or remotely accessed would not be subject to sales and use tax.

Several major exemptions from sales and use tax are provided that closely parallel the exemptions for tangible personal property, including sales or uses for resale and sales or uses of digital products incorporated as an ingredient or component of new products.

Appropriation: None.

Fiscal Note: Available.

Effective Date: This bill contains an emergency clause and takes effect July 1, 2009.